IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINETH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 19830 of 2004

Between:

1 D.P. Swamanna S/o D. Subbanna
Central Telegraph Office, M/s. Bharat Sanchar Nigam Limited

Kurnool R/o T-II/7, BSNL Quarters,
JJ Nagar, Kurnool-518004
2 M.C. Subbaiah S/o Sri M. Naganna
O/o Central Telegraph Office, M/s. Bharat Sanchar Nigam Limited,

Kurnool R/o 41/478 C-4,
Kothapeta, Kurnool

..... PETITIONERS

AND

1 The Registrar of Cooperative Societies,

Government of Andhra Pradesh, Hyderabad.
2 The Kurnool District Telegraphic Traffic Employees Cooperatie Credit

Society Limited, rep by
Secretary, Kurnool.
3 The Cooperative Senior Inspector/ Election Officer,

Kurnool district Telegraph Traffic Cooperative
Credit Society Limited, Kurnool.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Mandamus or any other appropriate Writ Order or direction in the nature

of Writ declaring the rejection of the Nomination Forms of the petitioners herein submitted for the posts of president and Director of the 2nd respondent Society for the election scheduled to be held on 31st October, 2004 by the 3rd Respondent vide his proceedings Rc. No. EO/KDTTCS/04 dt 14th October, 2004 as illegal and arbitrary and direct the 3rd respondent to accept the same with all consequential benefits such as participation in the election etc

Counsel for the Petitioners: MR.VEMURIVENKATESWARA RAO

Counsel for the Respondents 1 and 3: GP FOR COOPERATION

The Court at the admission stage made the following :

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ORDER:

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The petitioners seek a writ of Mandamus declaring the rejection of the nomination forms of the petitioners for the posts of President and Director of the 2nd respondent Society in the election scheduled to be held on 31-10-2004 as arbitrary and illegal.

The 2nd respondent is a society registered under A.P. Co-operative Societies Act (for short 'the Act'). In pursuance of the election notification, it appears that the petitioners herein filed a nomination for the posts of President and Director respectively. On 19-10-2004, the 3rd respondent-Election Officer, issued a list of invalid nominations in Form V under Rule 22(5)(f) of the Act and Rules made thereunder. As per the said list of invalid nominations, the nomination filed by the 1st petitioner was rejected on the ground that the 2nd Proposor is not eligible voter as per Rule 22(4)(b) of the A.P. Co-operative Societies Rules (for short 'the Rules'). Similarly, the nomination filed by the 2nd petitioner was rejected on the ground that the 1st Proposor is not eligible voter as per Rule 22(4)(b) of the Rules. The said action is under challenge in this Writ petition on the ground that the allegation that the Proposors of the petitioners are not eligible voters, is incorrect and baseless. It is contended that the proposers of both the petitioners never suffered any disqualification and both became members of the society by paying required share capital as well as the entrance fee.

The learned counsel for the petitioners submits that the 2nd Proposor of the 1st petitioner by name D.Gurumurthy, became the member of the Society by paying

share capital of Rs.100/- and Entrance fee of Rs.10/- in the month of May 2002. Similarly, the 1st Proposor of the 2nd petitioner by name Mr.M.Abdul Gafar, also became member of the Society in the month of December 2003 and his present share capital is Rs.5,000/-. Thus, no disqualification can be attached to the said two Proposors in terms of Rule 22(4)(b) of the Rules.

It is also pointed out that the second proviso introduced to Rule 18 of the A.P. Co-operative Societies Rules, 1964 cannot be made applicable to the petitioners herein since the same was never circulated and therefore even on that ground the Proposors cannot be said to be disqualified and consequently the rejection of the nominations of the petitioners cannot be sustained.

At the outset, it is to be noted under Section 61(3) of the Act, every dispute relating to, or in connection with, any election to a committee of the society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated. It is also made clear under sub-section (4) that every dispute relating to, or in connection with any election shall be referred under Sub Section (3) only after the date of declaration of the result of such election.

In the light of the mandatory provisions under the Statute, undoubtedly the petitioners cannot maintain this writ petition under Article 226 of the Constitution of India. However, the learned counsel for the petitioners while placing reliance upon the decision of this Court in **GANGARAPU USHAIAH vs. THE DISTRICT COLLECTOR (CO-OPERATION) MEDAK DISTRICT AT SANGAREDDY AND OTHERS,** submits that since the rejection of the nomination of the petitioners is *ex facie* bad and patently irregular, it is open to this Court to exercise the jurisdiction under Article 226 of the Constitution of India irrespective of the fact that a remedy is provided under the statute and that the election process has already commenced.

I am unable to agree with the said contentions of the learned counsel for the petitioners. As can be seen from the contentions raised by the petitioners, the question whether the proposors of the petitioners suffered any disqualification is a mixed question of fact and law which requires appreciation of several factual aspects. On the basis of the material on record, I am unable to hold that the impugned rejection of nominations of the petitioners is a patent irregularity. Since the impugned action cannot be said to be ex facie bad, the decision relied upon by the learned Counsel for the petitioners is of no assistance.

Hence, the matter requires determination only under the forum as prescribed under the Statute.

Accordingly, the writ petition is dismissed. However, this shall not preclude the petitioners to work out the appropriate remedy as available under the Statute. No costs.

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29-10-2004

vs

To

1 The Registrar of Cooperative Societies,

Government of Andhra Pradesh, Hyderabad.
2 The Secretary, Kurnool District Telegraphic Traffic Employees

Cooperatie Credit Society Limited, Kurnool.
3 The Cooperative Senior Inspector/ Election Officer,

Kurnool district Telegraph Traffic Cooperative
Credit Society Limited, Kurnool.

4 2CCs to the G.P for Cooperation, High Court Buildings, Hyderabad(O.U.T).

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